IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

WP(C).No. 32868 of 2007(K)

AGAINST THE ORDER DATED 18/10/2007 IN IA.7850/2007 IN OS.1545/2005 of RENT CONTROL COURT, TVM

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PETITIONERS:

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1. MAJITHA BEEVI, D/O.LATE ASUMA BEEVI, ATTARIKATHU VEEDU, 11TH STONE, NEDUMANGADU, THIRUVANANTHAPURAM.

2. SANOOJA BEEVI, D/O.LATE ASUMA BEEVI, ATTARIKATHU VEEDU, 11TH STONE, NEDUMANGADU, THIRUVANANTHAPURAM.

BY ADV. SRI.B.SATHIQ
SRI.C.ANIRUDHAN

RESPONDENTS:

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1. ABDUL VAHAB, S/O.LATE ABDUL RAHUMAN, NETTAYITHADATHARIKATHU VEEDU, NEDUMANGADU, THIRUVANANTHAPURAM.

2. AMJATH (MINOR), AGED 15, S/O.ABDUL VAHAB, NETTAYILTHADATHARIKATHU VEEDU, NEDUMANGADU, THIRUVANANTHAPURAM.

3. SADDAM (MINOR), AGED 13, S/O.ABDUL VAHAB, NETTAYILTHADATHARIKATHU VEEDU, NEDUMANGADU, THIRUVANANTHAPURAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

W.P.(C). NO. 32868 OF 2007

Dated this the 6th day of November, 2007

J U D G M E N T

This writ petition is filed against the order in I.A. 7850/07 in O.S. 1545/05. The said application was one for amendment of the plaint. The prayer incorporated in the suit was for a mandatory injunction. After the evidence was closed and arguments were heard, the respondents moved an application for amendment to add a prayer for recovery of possession of the property.

2. The main grievance of the petitioners are that they were not given any opportunity to file counter in the application and the court allowed the amendment application against the provisions of Order VI Rule 17 of the Civil Procedure Code. Under Order VI Rule 17 after the amendment in 2002, one is precluded from filing the amendment after the trial has commenced. But there are exceptional circumstances where amendment can be allowed, thereafter for which reasons have to be recorded.

3. I do not find any such application of mind by the court in this order and the court simply allowed the amendment application

stating that it will not change the character of the suit. Since the court has not given an opportunity to the writ petitioners to file their counter and as I find there is absence of total application of mind by the court to the relevant provisions of the CPC, I set aside the order passed by the court and remit back the application for fresh consideration of the court below. The writ petitioners are permitted to file their counter and the court after applying its mind to the relevant provisions of Order VI Rule 17 and on hearing the plaintiffs as well, dispose of the matter in accordance with law. Since I am disposing of the matter at the admission stage itself, the court shall give a notice to the plaintiffs and also fix a hearing date and then dispose of the matter in accordance with law.

The writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

vps